

General Concepts and Principles of Human Rights in the International and Indonesian Context

Cekli S. Pratiwi

Law Faculty, University of Muhammadiyah Malang

A. Introduction

This chapter outlines important aspects of the concept of human rights in the international and Indonesian context. First, it provides a description of human rights, briefly reviewing the definitions of the terms “human rights” and “subjects of human rights.” Then, it provides a description of the basic principles of human rights, along with a description of the state’s main human-rights obligations including the obligation to respect, protect, and fulfill human rights for its citizens. Fourth, it sets out international as well as Indonesian human-rights law and its sources. Finally, it provides a description of international and Indonesian human-rights enforcement mechanisms.

Understanding general concepts and principles of human rights is important because international human-rights law recently became part of Indonesia’s legal system, starting with the amendment of its 1945 Constitution.

B. A Description of Human Rights

In general, human rights are inherent rights, shared by everyone because of their “human dignity.” Human rights are not a legal gift but exist in every

person by virtue of being human. This dignity puts people apart from other living creatures such as animals and plants. In the Holy Qur'an, it is said that Allah created man with perfect advantages over other creatures¹ and in the best form.² According to Hugo Grotius, a "right" is: "A moral equality annexed to the person, justly entitling him to possess some particular privilege, or to perform some particular act."³ Thus human rights inherent in our nature as human beings put people in a special position, free to act, and free from all forms of oppression by other humans.

Human rights are fundamental rights that need to be guaranteed by states through their law. Smith in her book, *Textbook on International Human Rights*, underlines that "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments."⁴ The existence of human-rights law is intended to provide legally enforceable assurance that everyone has human rights which must be respected, protected and fulfilled by the state.⁵ With these rights humans can make demands morally or lawfully, to have or to get something, or to behave in a certain way.⁶ However, Grotius also emphasizes that the word "rights" is equivalent to the law that obliges us to do what is proper, not only what is just, because rights belong to the substance of justice and all other virtues.⁷ Thus, state guarantees of human rights provide humans with the power to enjoy their freedom, but also require humans to act fairly and correctly.

Protection of human rights means people can live without being discriminated against because of religion, ethnicity, race, color, sex, language, political belief, economic status, nationality or other status. The law

¹ Qur'an 17:70.

² Qur'an 95:4.

³ H. Grotius, *The Right of War and Peace*, cited in P. Hyden, *The Philosophy of Human Rights* (St. Paul, USA: Paragon House, 2001), 48.

⁴ R.K. Smith, *Texts and Materials on International Human Rights*, 6th edn. (Oxford University Press, 2013). 1–5.

⁵ If a human rights provision is codified in the form of an international treaty it is binding. Article 2 (1) (b) of the Vienna Convention on the Law of Treaties defines "party" as a state which has consented to be bound by the treaty and for which the treaty is in force. See also I. Brownlie, *Principles of International Law*, 5th edn. (Oxford, 1998).

⁶ See A.S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, 7th edn. (Oxford University Press), 1308, defining a right as "a moral or legal claim to have or get something or to behave in a certain way."

⁷ Grotius, *Right of War and Peace*.

provides protection and assurance for every human being, both individually and in groups, from all actions aimed at blocking, restraining, or violating fundamental freedoms or natural rights. International human-rights law threatens sanctions for anyone including a state/ruler who violates such fundamental human rights. Human-rights law is also intended to ensure the maximum enjoyment of human rights for everyone.⁸

According to Fitscher, the rule of law encourages countries to perform their duties effectively in respect of human rights.⁹ The establishment of the United Nations (UN) and various instruments of international human-rights law are efforts to strengthen the guarantee of human-rights protection. A government abiding by the precepts of the rule of law will create laws, guarantee equality and enforce those laws through independent institutions with due regard to the standards and norms of human rights agreed upon and recognized by civilized countries in the world.¹⁰ Human rights are manifested in various forms both within the scope of international human-rights law and domestic law. In international law, human rights are contained in treaties, international customs, general law principles, or international court decisions. In domestic law, human rights are embodied in the state constitution, legislation or other related regulations.

McCrudden¹¹ says that the recognition that everyone has human dignity can be encountered in various instruments of international human-rights law such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and its two derivative covenants.¹² Human dignity is also recognized in various constitutions of countries in the world such as the constitution of the United States, Germany, Cuba, Italy, Japan, etc.¹³

⁸ See OHCHR, *International Human Rights Law and The Role of The Legal Professions: A General Introduction. Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 6, <http://www.ohchr.org/documents/publications/training9chapter1en.pdf>.

⁹ T. Fitscher, "Inventing the Rule of Law for the United Nations," in *Max Planck Yearbook of United Nations Law*, Vol. 12, ed. A. Bogdandy and R. Wolfrum (Leiden: BRILL, 2008), 347–380, http://www.mpil.de/files/pdf3/mpuny_b_10_fitschen_12.pdf.

¹⁰ Ibid.

¹¹ C. McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19, no. 4 (2008): 655–724.

¹² See the UN Charter Preamble, the UDHR Article 1, the ICESCR, GA Res 2200A (XXI), 21 UN GAOR Supp (No. 16), at 49, UN Doc A/6316 (1966), 993 UNTS 3; the ICCPR, GA Res 2200A (XXI), 21 UN GAOR Supp (No. 16), at 52, UN Doc A/6316 (1966), 999 UNTS 171.

¹³ C. McCrudden, "Human Dignity," 664. See also Doron Shulztiner and Guy E. Carmi, "Human

The constitutions that have been in effect in Indonesia since 1945, the 1949 Constitution of the Federal Republic of Indonesia,¹⁴ the Temporary Constitution of Indonesia,¹⁵ and the Amendment to the Constitution of the Republic of Indonesia also state that every human has dignity as a human being.¹⁶ The affirmation that human rights are shared by every human is not due to the gift, inheritance, or merit of a country's ruler. Whether or not there are existing human-rights laws in a country, everyone in that country still has inherent human rights. Piechowiak argues that human rights are the rights that every person possesses because of his or her nature as a human being, so that human rights are not created by a law. The existence of the human-rights laws further strengthen the legitimacy and effective implementation of human rights. So, human rights exist simply because every person, whether male or female, is a human being, according to Piechowiak: "In the most basic sense human rights are understood as rights which belong to any person simply because of being human, independently of acts of law. On the existence of human rights, we state that every human being, simply because he or she is a human being has human rights."¹⁸

The problem of human rights arises because one group of humans is oppressing, torturing, colonizing, enslaving the other. But, at least human dignity issues was paid thousands of years ago by nations such as Greece, Babylon, Rome, and Britain, as well as by various indigenous

Dignity in National Constitutions: Functions, Promises and Dangers," *American Comparative Law* 62, no. 2 (Spring 2014): 461–490. Shulztiner states that before 2012, five countries used the term "human dignity" in their constitution: the United States, America, Germany, Cuba, Italy, and Japan. After 2012, there were 162 that did so.

¹⁴ See Article 19 of the 1949 Constitution of Federal Republic of Indonesia, which states that it is the authority of the ruler (state) to constantly increase the prosperity of the people by ensuring for every person a degree of life in accordance with "human dignity" for himself and his family.

¹⁵ See also the 1950 Temporary Constitution of Indonesia Section 37: "The rulers are obliged to conduct efforts to raise the prosperity of the people and are obliged to always ensure for every person life condition in accordance with human dignity for himself and his family."

¹⁶ See the 1945 Constitution of Indonesia Republic after the amendment; Article 28A: "Everyone has the right to be free from torture or any treatment that degrades a human being."

¹⁷ M. Piechowiak, "What are Human Rights? The Concept of Human Rights and Legal Justification," in *An Introduction to the International Protection of Human Rights*, ed. R. Hanski and M. Suksi, 2nd rev. edn. (Turku: Institute for Human Rights, University, 1999).

¹⁸ Ibid.

peoples.¹⁹ It is also present in the Qur'an, the Bible, and many other scriptures. There are several verses that affirm the meaning of human dignity and inherent dignity in the Qur'an. According to Hashim Kamali, the most explicit recognition of human dignity in Islam is found in verse 17:70: "We have bestowed dignity on the children of Adam [...] and conferred upon them special favors above the greater part of Our creation."²⁰

Resistance to the exploitation of human beings has been simultaneous with human existence itself, but it was understood in term of morality and religion, not as an enforceable legal right. The juridical resistance against human exploitation began with the birth of Magna Carta in England in 1215.²¹ Magna Carta became more important when reinterpreted in later centuries, first in Britain, and subsequently in Britain's North American colonies.²² Other early public manifestations of human-rights principles are in England's Habeas Corpus Act (1679) and Bill of Rights (1689), the Declaration of Independence of the United States of America (July 4, 1776), the Bill of Rights (first 10 Amendment) (December 15, 1791) that was subsequently incorporated in the United States Constitution (September 17, 1787), and the French *Déclaration des droits de l'homme et du citoyen* (1789).²³

Internationally, the development of human rights has grown rapidly after the emergence of the international community's revulsion to the devastation caused by World War II. Awareness of the importance of recognition and protection of human rights became a basis and a purpose of the establishment of the United Nations (UN) in 1945. The UN

¹⁹ P. Lauren, "The Foundations of Justice and Human Rights in Early Legal Texts and Thought," in *The Oxford Handbook of International Human Rights Law*, ed. Dinah Shelton (Oxford University Press, 165–166), retrieved December 30, 2018, from <http://www.oxfordhandbooks.com/view/10.1093/law/9780199640133-e-8>.

²⁰ M.H. Kamali, "Human Dignity in Islam and its Impact on Society," *New Straits Times*, Wednesday, October 25, 2017, <https://www.nst.com.my/opinion/columnists/2017/10/294803/human-dignity-islamand-its-impact-society>.

²¹ "Magna Carta Libertatum 1215," *The New Encyclopaedia Britannica*, 15th ed. (1998).

²² Ibid.

²³ G. Jellinek, *The Declaration of the Rights of Man and of Citizens: A Contribution to Modern Constitutional History* (1895), <https://oll.libertyfund.org/titles/jellinek-the-declaration-of-the-rights-of-man-and-of-citizens>.

Charter explicitly stated that the purpose of establishing the UN included encouraging respect for human rights internationally.²⁴

A new milestone in international human-rights arrangements was reached when the UN General Assembly passed the UDHR on December 10, 1948.²⁵ This Declaration is the first international document of human rights that has been agreed upon internationally. The Declaration has managed to combine the best values of socialist, liberal, and nationalist ideas that the international community can appropriate to protect people from barbaric actions, tyrannical rulers or other forms of oppression. Therefore, the UDHR is often referred to as the common standard of achievement of human rights. After World War II, the recognition of the “right of peoples to self-determination,” later contained in two instruments (ICCPR and ICESCR), became a trigger for, and a means of legitimizing, colonized countries’ struggle for their independence.

In 1966 the General Assembly adopted international treaties that included human-rights oversight and protection mechanisms, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR is complemented by the Optional Protocol to the ICCPR, establishing a complaint mechanism, and the Second Optional Protocol, aiming at the abolition of the death penalty. The ICESCR is complemented by the Optional Protocol to the ICESCR. The three main instruments and the above-mentioned protocols are known as “the International Bill of Human Rights.”

In examining the material content of international human-rights law, there are fundamental principles that must be understood for protecting human rights. Such principles will be described in section C. The formulation of the main articles contained in international human-rights law will be described in section D. International human-rights treaties have been ratified by an increasing number of states. Eventually they have become part of domestic law in many countries, one of which is Indonesia.

²⁴ See the UN Charter, Chapter I: Objectives and Principles, Article 1, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

²⁵ The UDHR was adopted by the UN General Assembly on December 10, 1948 at the Palais de Chaillot, Paris, France through the Resolution of the General Assembly Number 217 A (III), <http://www.un.org/en/universal-declaration-human-rights/index.html>.

In Indonesia, guarantees of human-rights protection can be found in several articles in the 1945 Constitution,²⁶ the 1949 Constitution of the Federal Republic of Indonesia,²⁷ and the 1950 Temporary Constitution.²⁸ The guarantee of human-rights protection in Indonesia was strengthened after the amendment of the 1945 Constitution of the Republic of Indonesia by incorporating Chapter XA concerning human rights. In 1999, three years before the amendment of the 1945 Constitution, Indonesia passed Law 39/1999 on Human Rights with content similar to that contained in international human-rights law. International and national human-rights laws provide that the state has an obligation to guarantee, respect, protect and fulfill human rights for every person (both domestic citizens and foreign citizens) under its jurisdiction and in the territory under its authority. In addition, human-rights laws also prohibit the state from committing human-rights violations.

In overview, human rights are inherent rights held by everyone because they have inherent dignity as a human being. Everyone has human rights without regard to their citizenship status, national origin, ethnicity, language, gender, or physical abilities. Human rights can be enforced by the existence of customs, treaties, and general principles of international law and other sources of international law as well as applicable domestic law.

C. Basic Principles of Human Rights

As explained in the introduction, human rights reflect the universal and fundamental human dignity inherent in every human being. The protection of human rights must extend to everyone without discrimination. Donnelly

²⁶ The human rights provisions are contained in seven articles on equal rights before the law and government (Article 27 (1), the right to work (27 (2), the right to association and assembly (Art.28), religious rights and worship (Art. 29), the right to education (Art. 31), cultural development rights (Art. 32), and right to welfare (Art. 34).

²⁷ The 1949 Constitution of the Federal Republic of Indonesia applied from December 27, 1949 to August 17, 1950. Human rights were regulated in Article 7 to 33, a total of 27 articles. Although many human rights provisions were adopted from the 1948 UDHR, their implementation was not seen because the 1949 Constitution of Federal Republic of Indonesia was only valid for one year.

²⁸ The 1950 Temporary Constitution of Indonesia was in effect from August 17, 1950 to July 5, 1959. Human rights were regulated in Article 7 to 34, a total of 28 articles. The human rights provisions were taken from the 1949 Constitution of the Federal Republic of Indonesia, with little change except the addition of one article, namely the right to strike (Art. 21).

emphasizes that human rights are equal, inalienable, and universal, even in cross-cultural perspective, because based on contemporary norms, human rights values of respect for individual rights and equality have been generally accepted by the international community.²⁹

Inherent and fundamental human rights also cannot be revoked or ignored by the state. Restrictions on human rights can only be carried out under strict conditions and with lawful procedural arrangements. The protection of one human right is often linked with and depends on the fulfillment of other rights. The fulfillment of one human right will support the fulfillment of other human rights. Similarly, the obstacles to the protection of one human right will hamper protection of other human rights.

This section elaborates more on the basic human-rights principle extracted from international human rights law. Some of these basic human rights principles will be described clearly in the following.

1. *Indivisible, Interrelated and Interdependent*

Human rights are interrelated and interdependent. Both civil and political rights and economic, social, and cultural rights are important and indivisible. Violation of one human right may affect and make unfulfilled other human rights (interrelated). For example, violations of the right to freedom of religion may result in a violation of the right to education, the right to health care, or other rights. The fulfillment of one right may depend on the fulfillment of other rights (interdependence). For example, the fulfillment of the right to health may depend on the fulfillment of the right to work. People who have jobs with a decent income will be able to enjoy the right to adequate health services.

2. *Universal and Inalienable*

The universality principle implies that human rights should be enjoyed by everyone equally, regardless of any differences, including cultural differences. The application of local culture cannot justify human-rights violations.

²⁹ J. Donnelly, *Universal Human Rights in Theory and Practice*, 3rd edn. (Cornell University Press, 2013), 107.

discrimination. The principle of universality is often contrasted with the principle of particularity. Adherents of the particularity of human rights believe that the application of human rights in one country can be different from their application in other countries, influenced by the social and cultural conditions of the local community.³⁰

Today the universal principle of human rights is more accepted by the international community than the principle of the particularity of human rights. The 1948 UDHR is a declaration of intent which has been generally referred to as the guideline in drawing up international agreements, resolutions, and declarations in the field of human rights. For example, in 1993 the World Conference on Human Rights in Vienna agreed that the state's obligation concerning human rights is an obligation to promote and protect all human rights and fundamental freedoms regardless of its political, economic and cultural system. All UN member states have ratified such agreements at least once, and 80% have ratified four or more international human-rights treaties, illustrating that states are concerned with committing themselves to human-rights obligations and thus demonstrating the universality of human rights.

The principle of inalienability means that states are not allowed to repeal any individual's human rights, except in very specific circumstances and under fair procedures. Human rights are defined as the rights inherent in human dignity.³¹ In Indonesia, a society founded on a belief in God, human rights are a gift from God Almighty.³² Since human rights are not a gift or inheritance or mercy of the state, the state is not allowed to revoke them (i.e. they are inalienable)³³ or arbitrarily restrict them.³⁴ For example,

³⁰ N. Walker, "Universalism and particularism in human rights," in *Human Rights: The Hard Questions*, ed. C. Holder and D. Reidy, 39–58 (Cambridge: Cambridge University Press, 2013), doi:10.1017/CBO9780511758553.004.

³¹ See the ICESCR adopted by the UN General Assembly resolution 2200A (XXI) of December 16, 1966. The Preamble, paragraph 2, states that the states parties to the present Covenant recognize "that these rights derive from the inherent dignity of the human person."

³² See also Article 1, paragraph 1 of Law 39/1999 on Human Rights.

³³ See also the 1948 UDHR in UN General Assembly Resolution 217 A (III) of December 10, 1948. The Preamble, paragraph 1, affirms the "recognition of the natural and equal rights and inalienable rights of all members of the human family [...]."

³⁴ The right to life, the right not to be tortured, the right not to be enslaved, the right to fair treatment before the law, and the right to adopt and choose a religion, are non-derogable rights. See Articles 3 to 9 of the UDHR, Art. 6, 7, 8 (1 and 2), 11, 15, 16 and 18 of the ICCPR 1966, Article 28 I paragraphs 1 and 2 of the 1945 Constitution of the Republic of Indonesia.

a person may only be prevented from the right to free movement if found guilty of a criminal offense based on a judge's verdict.

3. *The Principle of Equality and Non-Discrimination*

According to Theodorson and Theodorson, discrimination is defined as unbalanced treatment of individuals, or groups, based on categorical or distinctive attributes such as race, nationality, religion or membership of social classes.³⁵ The principle of non-discrimination is important and adopted in almost all international human-rights treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination³⁶ and the Convention on the Elimination of All Forms of Discrimination against Women. This principle applies to everyone and prohibits everyone from discriminating based on sex, race, color, religion, etc.

The principle of non-discrimination relates to the principle of equality as defined in Article 1³⁷ of the UDHR: "All human beings are born free and equal in dignity and rights." The use of the term "all human beings" means that "everyone" has the same rights, or in other words, no one may be denied his or her rights or be treated differently according to, for example, race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Such terms that denote the principle of universality are also found in several other human-rights conventions such as the ICCPR and the ICESCR.³⁸

The principle of non-discrimination is also recognized in various human-rights instruments at the regional level. For example, it is found in almost every chapter of the 1969 American Convention on Human Rights with a total of 43 articles using the term "every person," "no one," "everyone" and "anyone" interchangeably. More interestingly, one of t

³⁵ G.A. Theodorson and A.G. Theodorson, *A Modern Dictionary of Sociology* (New York: Barnes and Noble, 1979). See UN Charter (see note 1), Art. 1(3).

³⁶ This Convention was ratified by Indonesia on May 25, 1999 through Law 29/1999 and 40/2008 concerning Elimination of Race and Ethnic Discrimination.

³⁷ See also Art. 2, 4, and 7 of the UDHR.

³⁸ The ICCPR uses the word "every human being" in Art. 6, the word "everyone" in Art. 9 12 (1) (2), Art. 14 (2), (3) and (5), Art. 16, Art. 17 (2), Art. 18 (1), Art. 19, and Art. 22, while term "all persons" is used in Art. 10 (1), 14 (1), 26, "anyone" in Art. 6 (4), Art. 9 (2-5) and "one" in Art. 6.7, 11, 15 and 17 (1). Similarly, ICESCR Art. 2 (2) says "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

provisions of Art. 19 specifically uses the term “every minor child,”³⁹ which shows explicitly that the rights of young children are to be protected by the American family, society, and state. Furthermore, in the African Charter on Human and People’s Rights, there are 51 articles using slightly different terms including “every individual” and “all peoples.” Similarly, in the European region, the European Social Charter passed in Turin on October 18, 1961 and effective since February 26, 1965 says in the preamble:⁴⁰ “The Governments signatory hereto, being Members of the Council of Europe, [...] Considering that the enjoyment of social rights should be secured without discrimination on the grounds of race, color, sex, religion, political opinion, national extraction or social origin [...].”

The Preamble of the African Charter on Human and Peoples’ Rights, paragraph III references the Charter of the Organization of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.”

Then what about an Islamic state like Saudi Arabia? Does Saudi Arabia recognize the principle of equality? The Arab Charter on Human Rights adopted in Cairo on September 15, 1994 by the League of Arab States, the old version, in Article 2 says: “Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status, and without any discrimination between men and women.”⁴¹

The Arab Charter on Human Rights recognizes the principle of equality of every human being as part of the relentless effort to achieve the principles already existing in Islamic Law (Shari’ah), including coexistence with different religions. The principle of “non-discrimination” is explicitly stated in Article 2, which even explicitly prohibits discrimination against

³⁹ See Article 19: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

⁴⁰ Council of Europe, *European Social Charter: Collected Texts*, 7th edn. (updated January 1, 2015), 9.

⁴¹ See *The Arab Charter on Human Rights*, September 15, 1994, available at <https://www.refworld.org/docid/3ae6b38540.html>.

men and women. Unfortunately, this Charter has been criticized by experts, NGOs, academics and others for its lack of any human-rights enforcement mechanism compared to the international human-rights enforcement mechanism.⁴² On May 23, 2004, a new version of this Charter was presented to and adopted by the Arab Summit in Tunisia. This charter entered into force in March 2008 and has been accepted by ten Arab states: Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen. Articles 1 and 3 of the new version confirm the equality between men and women in the Arab World.⁴³

Other Islamic countries have also accepted and applied the principles of democracy, one of which is recognition and respect for human rights, as noted by Noah Feldman, stating that "Currently, the constitutions of Iraq and Afghanistan do guarantee equality for men and women."⁴⁴

The above description shows that both in countries where Muslims are a minority, as in the United States and in several regions of Africa and Europe, as well as in countries where Muslim are a majority, rights are guaranteed in the applicable human-rights laws of that country, because based on Article 2 of the ICCPR, human rights do not consider differences in religion, race, color, sex, language, politics, nationality or origin, level of wealth, and birth.

Is the principle of non-discrimination recognized in the human-rights law of Indonesia? The principle of non-discrimination is also an important principle in the protection of human rights in Indonesia as regulated in Article 28I paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states that "Every person shall have the right to be free from discriminatory treatment on any basis and entitled to protection against discriminatory treatment."

The prohibition of discrimination in Indonesia is specifically regulated through Law 39/1999 on Human Rights, and in 2008, Indonesia passed Law 40/2008 on the Elimination of Race and Ethnic Discrimination. Both

⁴² M.A. Al-Midani and M. Cabanettes, *The Arab Charter on Human Rights 2004*, rev. Susan M. Akram, 147–148 (2000), available at http://www.eods.eu/library/LAS_Arab_Charter_on_Human_Rights_2004_EN.pdf.

⁴³ *Ibid.*, 149.

⁴⁴ Noah Feldman, *Noah Feldman's The Fall and Rise of the Islamic State*, ed. Alison Lake (Herndon, VA: American Muslims for Constructive Engagement, 2008).

Laws explain that discriminatory acts are categorized as criminal offenses and are subject to substantial penalties. However, in practice there are still many discriminatory acts occurring in Indonesia, whether based on race, ethnicity, religion, economic level, or other grounds. It is therefore necessary to raise public awareness about respecting differences, and to encourage governments to issue policies that give everyone the opportunity to be treated as equals and enforce the law strictly on those who violate them.

4. State Obligations on Human Rights

Tomuschat in his book *Human Rights: Between Idealism and Realism* illustrates that the history of human rights cannot be separated from the the history of the formation of the modern state itself. Some of the underlying reasons are that

on the one hand, the state has been accepted as an organization well-suited to promoting the interests of its members in the never-ending fight for resources among different communities; on the other hand, it has also been identified as a lethal threat to the life and wellbeing of its members. Human rights have a dialectic function in overcoming that tension. [...] On the one hand, the state is the guarantor of human rights, the institutional framework called upon to safeguard the existence, the freedom, and the property of the individual citizen; at the same time, however, [...] time and time again persons or authorities vested with sovereign powers have infringed the rights of the citizen.⁴⁵

The reduction or restriction of human rights is only permitted (1) for certain rights and under certain circumstances (such as public emergency), (2) for certain aims, which must be expressly stated in law, and (3) when not intended to discriminate against other parties.⁴⁶ Laws only affirm or

⁴⁵ C. Tomuschat, *Human Rights: Between Idealism and Realism*, 2nd edn. (Oxford University Press, 2008), 8.

⁴⁶ T. Buergenthal, "To Respect and To Ensure: State Obligations and Permissible Derogations,"

reinforce that human rights are real. Therefore, the 1945 Constitution of the Republic of Indonesia explicitly states that the guarantee of human rights is a responsibility enforceable by the state.

The Office of the UN High Commissioner for Human Rights has explained that in respect of international human-rights law, states have three main responsibilities, namely (1) to respect, (2) to protect, and (3) to fulfill the human rights of their people. The obligation to respect means that states should refrain from interfering with or limiting the fulfillment of human rights. The obligation to protect obliges States to protect individuals and groups against human-rights violations. The obligation to fulfill means the State must take positive action to facilitate the fulfillment of human rights.⁴⁷ In Indonesia, Article 28I (4) of the 1945 Constitution of the Republic of Indonesia and Article 8 of Law 39/1999 on Human Rights says "Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government."

The obligations of states in relation to economic, social and cultural rights as set out in Article 2 (1) of the ICESCR requires the state to "take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights" recognized therein. It also requires states to ensure the enjoyment of economic, social and cultural rights without discrimination and to ensure men and women can enjoy these rights. Specific actions are to be taken by the state, such as composing or enacting laws and promoting these rights in public policy.

The obligation to achieve the full realization progressively as stated in the Convention on the Rights of the Child Article 4 (2) is a central aspect of the state's obligations. The point is the obligation to take appropriate action toward full realization of economic, social and cultural rights with their available resources. The reference to "available resources" reflects that the realization of these rights can be hampered by a lack of resources and can be achieved only within a certain timeframe. This means that the state's compliance with its obligation to take appropriate action is judged by its

in *The International Bill of Rights*, ed. L. Henkin, at 78–86 (New York: Columbia University Press, 1981); P. R. (Sandy) Ghandhi, "The Human Rights Committee and Derogation in Public Emergencies," *German Yearbook of International Law* 32 (1989): 323.

⁴⁷ See <http://humanrightshistory.umich.edu/accountability/obligationr-of-governments/>.

available financial and other resources. Many national constitutions also allow for the progressive realization of some economic, social and cultural rights.

Although states can realize some human rights progressively, they must also take immediate action, regardless of the resources they have, in five areas: (1) the elimination of discrimination; (2) those economic, social and cultural rights that are not subject to progressive realization, such as non-discrimination;⁴⁸ (3) the obligation to “take steps”; (4) non-retrogressive measures; and (5) minimum core obligations. The Limburg Principles on the ICESCR further clarify and affirm what responsibilities the participating countries of the covenant must fulfill.⁴⁹ The elimination of discrimination means states have an obligation to fulfill the citizens’ social, economic and cultural rights equally without any discrimination. The fulfillment of the right to work must necessarily open equal opportunities to all men, women, disability groups, regardless of race, religion, race, gender, political belief etc. The obligation to take steps mean that states parties shall have the obligation to take appropriate measures to achieve the objectives referred to in the Covenant, including the adoption of various regulations or related policies to the maximum of their available resources. The obligation of non-retrogressive measures means that progressive realization requires the state’s active action through the effective use of resources. This progressive achievement obligation is not affected by the increase in the resource level of a country’s economic development. Thus, the state must prioritize and ensure the fulfillment of minimum basic rights for all people. The minimum core obligations of the states are the obligation to respect, to protect, and to fulfill the rights guaranteed in the ICESCR.

The aim of ICESCR is none other than to protect human rights so that people can live as fully human, free, secure, protected and healthy. The right to life as the ultimate right can never be achieved unless all the basic rights such as “the right to work, to eat, home, health, education, and culture” can be fulfilled and are available to everyone.⁵⁰ Along with this fundamental

⁴⁸ See article 2(2), cf. Limburg Principles para 22.

⁴⁹ UNHCHR, *Economic, Social and Cultural Rights Handbook for National Human Rights Institutions*, Professional Training Series 12 (New York and Geneva: UN, 2005), retrieved from <http://www.ohchr.org/Documents/Publications/training12en.pdf>.

⁵⁰ United Nations. (2001). Fact Sheet No. 16 (Rev.1). The Committee on Economic, Social, and

objective, an international human-rights instrument was established to provide both individuals and groups with the right to economic, social and cultural rights contained in the ICESCR 1966. The ICESCR⁵¹ outlines the right to work, the right to education, the right to a decent life, the right to a healthy environment, the right to cultural development, etc.

Compared with civil and political rights contained in the ICCPR, often economic, social and cultural rights are second-generation rights where compliance cannot be enforced, cannot be prosecuted (non-justiciable), and can only be met by the state gradually and are fulfilled progressively. However, along with the recognition of the global human-rights law system, which is marked by the acceptance of the UDHR, countries of the world repeatedly asserted at the World Conference on Human Rights in 1993 that both human-rights fields, the ICCPR and the ICESCR, are just as important. UN General Assembly Resolution No. 32/130 of December 1977 says:

- (a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion, and protection of both civil and political, and economic, social and cultural rights; (b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, as recognized by the Proclamation of Teheran of 1968.⁵²

As an example, the General Comment no. 15 of the Committee on Economic, Social and Cultural Rights expressly provides interpretation of Article 11 and Article 12 of the ICESCR, saying that the right to water is something that cannot be separated from other human rights. In its argument, this Committee shows that many other human rights such as the

Cultural Rights, Centre for Human Rights of the United Nations, Geneva.

⁵¹ Ibid.

⁵² Ibid., 5.

right to life cannot be obtained by human beings if they cannot enjoy the right to water. Thus, both civil-political rights as well as economic, social, and cultural rights are interdependent, and both require equal attention from the state both in terms of their application, socialization, and protection. This is to remember that the fulfillment of civil and political rights alone without the fulfillment of one's economic, social and cultural rights is highly unlikely. Therefore, realizing the fulfillment of economic, social and cultural rights requires support either from national or international policy. Thus, any denial of economic, social and cultural rights on the grounds that they are not real rights, that they do not require state involvement, or that they can be gradually fulfilled, is no longer relevant. The ICESCR was adopted by the UN General Assembly through Resolution 2200 A (XXI) in December 1966 and has been in force since January 3, 1976. At present, with 169 states having ratified the ICESCR, the present Covenant has undergone a change of character: originally only a multilateral agreement, it has now turned into international customary law, which binds each country with or without ratification.⁵³

D. International Human-Rights Law and Its Instruments

International human-rights law has developed rapidly since the founding of the United Nations. International human-rights law consists of international treaties, international customs, declarations, general legal principles, and guidelines. The international agreements are made by states and carry various names such as charter, covenant, convention, or protocol. Examples of international treaties on human rights are ICCPR 1966, ICESCR 1966. International customary laws are common practices accepted as law by states. An example of international customary law is the UDHR.

Although the declaration itself is not binding, the articles in the declaration have status as international custom. Other sources of international

⁵³ International Covenant on Economic, Social and Cultural Rights. Retrieved on December 30, 2018 at <https://treaties.un.org>. See also Boer Mauna, *Hukum Internasional* (Bandung: Alumni Bandung, 2000).

human-rights law such as principles, guidelines or recommendations are not binding in nature, but this shows the consensus of the international community to give the content political or soft law status.

1. *The UDHR*

The UDHR was adopted by the General Assembly in Resolution 217 A (III) of December 10, 1948. There were 48 states that voted for the UDHR, eight that abstained (Belarus, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, Soviet Union, and Yugoslavia), and no state that voted against it.⁵⁴

The UDHR is a common standard of achievement of human rights that is to be protected for all people and all nations. Currently, it has been translated into over 500 languages.⁵⁵

Article 1 of the UDHR provides that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The provision teaches the spirit of kinship, in which human beings are members of society that are interconnected with each other rather than competing and harming one another.

This article is the basic philosophy defining the basic assumption of the UDHR that the right to liberty and equality is a right obtained by humans from birth and that they cannot be deprived of it; and since man is a rational and moral creature, he is different from other beings on earth, and therefore entitled to obtain certain rights and freedoms not enjoyed by other beings.⁵⁶

Article 2 of the UDHR, a basic principle of equality and non-discrimination, says: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made based on the political, jurisdictional or international status of the

⁵⁴ K. Drzewicki, “The United Nations Charter and the Universal Declaration of Human Rights,” in *An Introduction to the International Protection of Human Rights*, ed. Raija Hanski and Markku Suksi (Turku: Institute for Human Rights, 2004), 71.

⁵⁵ <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁵⁶ See <http://www.komnasham.go.id/>, *Lembar fakta HAM*, 3rd edn., 15.

country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

Article 3 of the UDHR says “Everyone has the right to life, liberty and security of person.” This article constitutes the first milestone of the Declaration declaring the right to life, liberty and security of a person essential to the fulfillment of other rights.⁵⁷

Article 4 to 21 the UDHR set out the principle and guarantee of civil and political rights, which are further elaborated in the ICCPR. The provisions of Article 22 to 27 of the UDHR are a guarantee of socio-economic and cultural rights, which are further elaborated in the ICESCR.

Article 28 to 30 of the UDHR is a formulation of the rights and obligations of the international community to maintain public order with the exercise of rights and freedoms in accordance with the law. Article 28 of the UDHR says: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Article 29 of the UDHR says:

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 of the UDHR says: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

⁵⁷ Ibid., 16.

The UDHR contains 30 articles. Operationally, it can be divided into 3 groups of articles, see Table 1.

Table 1. The Contents of the UDHR 1948

No.	Group	Content
1	Articles 1 to 2, 28, 29, and 30	The principle of equality (Art. 1); the principle of non-discrimination (Art. 2); the concept of state obligations (Art. 28); individual obligations (Art. 29 (1)); permissible restrictions (Art. 29 (2)); and a prohibition on anyone destroying the rights and freedoms guaranteed in this declaration (Art. 30).
2	Articles 4 to 21	Civil and political rights elaborated by the ICCPR.
3	Articles 22 to 27	Economic, social and cultural rights elaborated by the ICESCR.

2. The ICCPR

The ICCPR was established and declared open for signature, ratification and accession by General Assembly resolution 2200 A (XXI) on December 16, 1966. The Covenant is ratified by Indonesia through the Law 12/2005 on the ratification of the ICCPR.

The ICCPR contains 53 Articles and is divided into six parts as can be seen in Table 2.

Table 2. The Contents of the ICCPR⁵⁸

No.	Group	Content
1	Parts I to III (Articles 1 to 27)	The right to self-determination (Art. 1); the prohibition of discrimination (Art. 2); gender equality (Art. 3); the limitation of restrictions on rights (Art. 4 and 5); the right to life (Art. 6); the prohibition of torture and inhuman punishment (Art. 7 and 10); the prohibition of slavery (Art. 8); the right to liberty and security including the prohibition of incarceration for non-payment of debt (Art. 9 and 11); the freedom of movement (Art. 12 and 13); the right to a fair trial process, including the prohibition of retroactive application of the law (Art. 14 and 15); the recognition of one's legal status (Art. 16 and 17); the right to freedom of thought, conscience and religion (Art. 18); freedom of opinion and expression, including the prohibition of propaganda and incitement (Art. 19 and 20); freedom of association, assembly, and trade unions (Art. 21 and 22); the right to marry, found a family and the right of child (Art. 23 and 24); political rights (Art. 25); the right to equality before the law (Art. 26); and rights as a minority group (Art. 27).
2	Parts IV to VI (Articles 28 to 53)	The monitoring mechanisms and principles of interpretation. ¹ Among the above-mentioned civil and political rights arrangements, the prohibitions of torture, slavery and the application of the law on a retroactive basis are absolute. Other rights allow for reservations, restrictions or derogations. (This is as regulated in Article 4 of the ICCPR.)

3. *The ICESCR*

The ICESCR was established and declared open for signature, ratification and accession by General Assembly resolution 2200 A (XXI) on December 16, 1966.

The Covenant is ratified by Indonesia through the Law 11/2005 on the ratification of ICESCR.

⁵⁸ See the ICCPR retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

Table 3. The Contents of the ICESCR⁵⁹

No.	Group	Content
1	Parts I and II (Articles 1 to 5)	The right to self-determination (Art. 1); the obligation of the states towards economic, social and cultural rights (Art. 2 to 4); and the limitation of restrictions (Art. 5).
2	Part III (Articles 6 to 15)	The right to work (Art. 6); the right to just and favorable working conditions (Art. 7); the right to form and participate in labor organizations (Art. 8); the right to social security, including social insurance, especially for mothers, children and young people (Art. 9 and 10); the right to a decent living condition (Art. 11); the right to enjoy high standards of physical and mental health (Art. 12), the right to education (Art. 13 and 14); and the right to participate in cultural life (Art. 15).
3	Parts IV and V (Articles 16 to 31)	The responsibilities of the state's parties. ²

E. Human-Rights Regulations in Indonesia

The government of Indonesia becomes more concerned with human-rights issues at the end of the New Order regime, marked by the establishment of the National Commission on Human Rights (*Komnas HAM*) in 1993. At the beginning of the reform period, the People's Consultative Assembly (*MPR*) issued the Decree Number XVII/MPR/1998 on Human Rights, which has been described in Law 39/1999 on Human Rights and Law 26/2000 on Human Rights Courts. The expansion of human-rights guarantees through the articles of the 1945 Constitution, particularly the outcome of the Second Amendment, is an improvement in establishing the legal foundation of the state for strengthening the recognition of human rights.⁶⁰ There are also various regulations in the field of human rights that have been adopted in Indonesia (see Table 4).

⁵⁹ See <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

⁶⁰ H.P. Wiratraman, "Hak-hak Konstitusional Warga Negara Setelah Amandemen UUD 1945: Konsep, Pengaturan dan Dinamika Implementasi," *Jurnal Hukum Panta Rei* 1, no.1 (December

With the ratification of various international conventions in the field of human rights such as ICCPR through Law 12/2005 and the ICESCR through Law 11/2005, as well as other conventions, the national human-rights law strengthened the position of citizens in relation to the state.

1. *Human Rights Under the 1945 Constitution and the 1999 Human Rights Law*

The formulation of human rights in the 1945 Constitution is far more complete after the Amendment than before, because the Amendment provides an additional chapter concerning human rights, Chapter XA, which is divided into several provisions from Article 28A to Article 28J. The articles are adopted from the UDHR, the ICCPR, and the ICESCR. Although the two international covenants were recently ratified by the Government of Indonesia in 2005, Indonesia has submitted itself to the binding force of the two covenants since 1999 when Law 39/1999 on Human Rights was passed. Then, the formulation of human rights was reinforced and mentioned in the constitution.

The Indonesian human-rights law can be divided into 3 parts:

a. *Civil rights that are non-derogable*

Non-derogable rights are defined in Article 28I of the 1945 Constitution or Article 4 of the Human Rights Law stating that: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances."

There are at least seven types of civil rights explicitly stated as *non-derogable* rights or rights that cannot be limited under any circumstances, namely:

- a. the right to life;
- b. the right not to be tortured;
- c. the right of freedom of thought and conscience;

2007).

- d. religious rights;
- e. the right not to be enslaved;
- f. the right to be recognized as a person before the law;
- g. the right not to be prosecuted based on retroactive law.

This concept is like that provided for in Article 4 of the ICCPR, which states that: "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."⁶¹

The interpretation of the formulation of Article 28I of the 1945 Constitution of Republic of Indonesia is often associated with the provisions of Article 28J. Although Article 28I has explicitly mentioned rights that are non-derogable under any circumstances, in the practice of law enforcement in Indonesia, these rights are still defined as rights that may be restricted by the state to the extent that such restrictions are in accordance with the provisions of Article 28J (2), which says: "In exercising their rights and freedoms, each person shall be subject to the restrictions laid down by law with the sole intent of securing the recognition and respect of the rights and freedoms of others and to satisfy fair demands in accordance with moral judgment, religious values, security, and public order in a democratic society." Furthermore, it is also mentioned in Article 70 of the Human Rights Law.

According to Article 28J (2) of the 1945 Constitution of Republic of Indonesia, then:

(a) In exercising their rights and freedoms, everyone is subject to the restrictions set forth in the law. This means that the state can pass a law aimed at limiting the rights of the citizens, provided that the law is made in legitimate ways by the agency that has the authority to make it. According to the Indonesian constitution, the institution which has the authority to enact

⁶¹ The articles in question sequentially regulate the right to life (Art. 6), the right not to be tortured (Art. 7), the right not to be enslaved (Art. 8 paragraph 1 and 2), the right not to be imprisoned for failing to fulfill a contractual obligation (Art. 11), the right not to be prosecuted on the basis of retroactive law (Art. 15), the right to be recognized personally before the law (Art. 16) and the right to freedom of thought, belief and religion (Art. 18). There is only one article which is not included in the 1945 Constitution as a non-derogable right, namely Article 11.

the law is the People's Legislative Assembly (DPR) with the approval of the President (Art. 5 and Art. 20 of the 1945 Constitution).

(b) Restrictions on such rights are aimed at ensuring and protecting the respect of the rights of others and meeting fair demands.

(c) Such restrictions must be based on moral considerations, public order, and public welfare in a democratic society. The 1945 Constitution also incorporates religious values as one of the considerations that can be used in limiting one's rights. Article 70 of the Human Rights Law does not include religious values as an element of restriction, but does incorporate aspects of national security as part of the considerations in limiting rights.

(d) The limitation of such rights should not involve discrimination solely based on race, color, sex, language, religion or social origin. This is also affirmed in Article 4 paragraph (1) of the ICCPR and Article 29 paragraph 3 of the UDHR as well as Article 28I paragraph (2) of the 1945 Constitution of 1945 and Article 3 paragraph (3) of the Human Rights Law.

b. *Other civil and political rights and their problem of limitation*

Other civil and political rights that are also guaranteed by the 1945 Constitution of the Republic of Indonesia are the right to a fair hearing and an open trial by an independent and impartial tribunal; the right to be presumed innocent until proven guilty (Art. 28D (1)); freedom from arbitrary interference with personal freedom, family, home or correspondence (Art. 28G and Art. 28H (1)); freedom to move and reside (Art. 28H (1)); the freedom of opinion and expression (Art. 28E (1 and 2)); the right to peaceful assembly (Art. 28E (3)); and the right to participate in the government of one's country and equal access to public services (Art.

28D (3)). Those rights are also guaranteed in Law 39/1999 on Human Rights. Since those rights are defined as derogable rights, such restrictions must be based on moral considerations, religious values, security, and public order in a democratic society as mentioned in Article 28J of the 1945 Constitution of Republic of Indonesia and Article 70 of Law 39/1999 on Human Rights.

However, the use of “religious values” as a reason for restrictions continues to be debated because, first, it is not listed in the ICCPR. Second, this restriction will be contrary to the principles of human rights as explained earlier, especially the principles of universality, equality, non-discrimination, and non-derogability. Third, religious values are often translated by judges as teachings or practices of orthodox doctrine. Therefore, teachings or practices that are contrary to orthodox doctrines of the six recognized religions, namely Islam (Sunni), Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, are considered to be in conflict with religious values held in Indonesia. As a result, propagators of heterodox or mystical beliefs or non-beliefs⁶² can be criminalized under the blasphemy law.⁶³ In this case the government tends to protect the majority religion over the minority.⁶⁴ For example, in the case of blasphemy, the government has issued regulations and policies to impose certain restrictions on religious minorities.⁶⁵ Recently, the criminalization of various religious minority groups, such as the Ahmadiyya, Shia, and others has become the spotlight of the international community. The Indonesian government is encouraged to immediately amend the Law on Blasphemy in accordance with international human-rights standards.⁶⁶

⁶² See Law Number 1 / PNPS / 1965 Article 4(b).

⁶³ See Indonesia Criminal Code Article 156 and 157(1).

⁶⁴ Following the fatwa of the Indonesian Ulema Council on Ahmadiyya teachings as heretical religion, various local governments issued governor regulations to ban Ahmadiyya activities. See Rafendi Djamin, *The Paradox of Freedom of Religion and Belief in Indonesia*, 2–3, retrieved on December 30, 2018 at www.ohrc.org.

⁶⁵ Melissa Crouch noted that there were more than 50 religious minorities banned by the government from 2009 to 2018. See M. Crouch, “Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law,” *Asian Journal of Comparative Law* (2012).

⁶⁶ In Indonesia, Law no. 1/PNPS/1965 regarding Prevention of “Abuse and / or Defamation of Religion” is commonly known as the blasphemy law. The enforcement of the blasphemy law in Indonesia has become one of the main problems arising in the Universal Periodic Review (UPR) recommendations in cycles 1, 2 and 3 of the UN Human Rights Council (HRC), which encourages Indonesia to amend the law and improve rights to religious freedom in line with international human-rights standards. See Universal Periodic Review – Indonesia, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/IDindex.aspx>

c. *Economic, social and cultural Rights*

The economic, social and cultural rights guaranteed in the 1945 Constitution of The Republic of Indonesia are the right to own property (Art. 28H (14)); the right to social security (Art. 28H (3)); the right to work and the right to equal pay for equal work (Art. 28D (2)); the right to rest and leisure (Art. 28H (1)); the right to an adequate standard of living, health and life (Art. 28H (1)); the right to education (Art. 28C (1)); the right to participate in cultural life (Art. 28I (3) and Art. 28C (2)); and the right to information (Art. 28F). Those rights are also guaranteed by Law 39/1999 on Human Rights, as seen in Table 4.

**Table 4. Distribution of Human-Rights Formulations
in the Universal Declaration of Human Rights,
International Covenant on Civil and Political Rights,
ICESCR Covenant, 1945 Constitution of 1945, Human Rights Law**

No	Type of Rights guaranteed	UDHR	ICCPR	ICESCR	Indonesia Constitution 1945	HR Law
1	Non-discriminatory treatment	2	20, 27		28I (1), (2)	3 (3)
2	The right to life, freedom and security	3	6, 9		28A, 28I (1)	3 (2), 9
3	Freedom from slavery and bondage	4	8		28I (1)	4, 20 (1), (2)
4	Freedom from torture and cruel, inhuman or degrading treatment or punishment	5	7		28G (1), 28I (1)	4, 33, 34
5	The right to be recognized as a person before the law everywhere	6, 7	16, 26		28I (1)	4, 5

6	The right to an effective remedy	8	9			
7	Freedom from arrest, arbitrary detention or alienation	9	9, 10		28D (1)	4, 5
8	The right to a fair hearing and an open trial by an independent and impartial tribunal	10	14		28D (1)	17
9	The right to be presumed innocent until proven guilty	11	15		28D (1)	17, 18
10	Freedom from arbitrary interference with personal freedom, family, home or correspondence	12	17		28G, 28H (1)	29, 31, 32
11	Freedom to move and reside	13	12		28H (1)	27, 40
12	The right to asylum	14	13		28G (2)	28
13	The right to citizenship	15	13, 24		28D (4)	26
14	The right to marry and establish a family	16	23, 24		28B	10
15	The right to own property	17	11		28H (4)	19, 36, 37
16	Freedom of thought, conscience and religion	18	18		28 E (1,2)	22 (1), (2)
17	Freedom of opinion and expression	19	19		28E (3)	23, 24, 25, 44

18	The right to peaceful assembly and assembly	20	21, 22	8	28E (3)	16, 39
19	The right to participate in the government of one's country and equal access to public services	21	25		28D (3)	43, 44
20	The right to social security	22		9, 10	28H (3)	41
21	The right to work and the right to equal pay for equal work	23		6, 7	28D (2)	38
22	The right to rest and leisure	24		10	28H (1)	9 (2)
23	The right to an adequate standard of living, health and life	25		11, 12	28H (1)	40, 42
24	The right to education	26		13, 14	28C (1)	12, 13
25	The right to participate in cultural life	27		15	28I (3), 28C (2)	15
26	The right to information				28F	14
27	Women's rights					45, 46, 47, 48, 49, 50, 51
28	Rights of the child					52, 53, 54, 55, 56, 57, 58 to 66.

Sources: The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, ICESCR Covenant, 1945 Constitution of 1945, Human Rights Law

From Table 4, it can be seen that Indonesia as a state party to the ICCPR has adopted all provisions of the ICCPR into the 1945 Constitution of Indonesia as well as the Human Rights Law of Indonesia, except the right to an effective remedy provided in Art. 8 of the UDHR or Art. 9 of the ICCPR. However, there are some provisions that are provided in Indonesian Law but not in the International Bill of Human Rights. The first is the right to information. This right is provided in Article 28F of the 1945 Constitution as well as Art. 14 of Human Rights Law, but not mentioned in the UDHR or the ICCPR, since the right to information is part of the freedom of opinion and expression provided in Art. 19 of the UDHR and the ICCPR. Second, women's rights and the rights of the child are not found in the UDHR or the ICCPR, but have been more elaborated on in the Human Rights Law of Indonesia, because at the international level these two particular issues have been regulated separately in the International Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Right of the Child (CRC) that have both been ratified by Indonesia.

**Table 5. Various Regulations in the Field of Human Rights
That Have Been Adopted in Indonesia**

The protected group	Instruments
General	• Law 8/1998 on Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). • Law 9/1998 on Freedom of expression • Law 8/1999 on Consumer Rights and Protection. • Law 26/1999 on the revocation of subsidiary law which is considered to restrict the right of opinion • Law 39/1999 on Human Rights. • Law 40/1999 on the Press, Rights and Obligations. • Law 26/2000 on the Human Rights Court. • Law 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Law 12/2005 on Ratification of the International Covenant on Civil and Political Rights (ICCPR). • Law 15/2009 on Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Completing the United Nations Convention Against Transnational Organized Crime. • Law 14/2008 on the Openness of Public Information • Law 31/2014 on an Amendment to Law 13/2006 Concerning the Protection of Witnesses and Victims • Law 12/2006 on Citizenship of the Republic of Indonesia. • Law 5/2010 on an Amendment to Law 22/2002 on Clemency. • Law 21/1997 on the Eradication of the Crime of Trafficking in Persons • Law 23/2006 on Population Administration • Law 14/2009 on Ratification of the Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.
Women	• Law 7/1984 on the Ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Law 23/2004 on the Elimination of Domestic Violence

Child	• Law 4/1979 on Child Welfare • Law 1/2000 on Ratification of ILO Convention No. 182 on Violations and Immediate Action on the Elimination of the Worst Forms of Child Labor (ICRMW) • Law of the Republic of Indonesia No. 20/1999 Concerning Ratification of ILO Convention No. 138 Regarding Minimum Permitted Working Age • Law 23/2002 on Child Protection • Law 11/2012 on the Juvenile Justice System • Law 10/2010 on Ratification of the Optional Protocol to the Convention on the Rights of the Child Concerning the Sale of Children, Child Prostitution and Child Pornography
Labor	• Law 11/1998 on Labor Rights and Obligations in Indonesia • Law 19, 20 and 21 of 1999 on Labor. • Law 15/2016 About Ratification of the Maritime Labor Convention, 2006 • Law 39/2004 on the Placement and Protection of Overseas Workers.
Minority	• Law 29/1999 on Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) • Law 40/2008 on the Elimination of Racial and Ethnic Discrimination
Persons with Disabilities	• Law 19/2011 on the Ratification of the Convention on the Rights of Persons with Disabilities (ICRPD) • Law 8/2016 on Persons with Disabilities

Sources: These data are cited from various secondary resources.

Table 5 shows that all human-rights standards and provisions stated in the UDHR, the ICCPR, and the ICESCR have been adopted by the Indonesian government through the enactment of several laws. Eight out of nine international human-rights instruments have been ratified by the government of Indonesia Republic: ICERD,⁶⁷ ICCPR, ICESCR, CEDAW,⁶⁸ CRC,⁶⁹ CAT,⁷⁰ ICRMW,⁷¹ CRPD,⁷² and CPED. Most of these laws have been enacted after the 1999 Amendment to the 1945 Constitution of Indonesia.

⁶⁷ CERD was accepted by UN General Assembly Resolution No. 2106 (XX), December 21, 1965. Indonesia ratified CERD through Law 29/1999.

⁶⁸ CEDAW was ratified by Indonesia through Law 7/1984.

⁶⁹ CRC was ratified by Indonesia through Presidential Decree 36/1990.

⁷⁰ CAT was accepted by UN General Assembly resolution 39/46 of December 10, 1984. Indonesia ratified it through Law 5/1998.

⁷¹ ICRMW was ratified by Indonesia in May 2012.

⁷² CRPD was ratified by Indonesia government in November 2011.

All the human-rights instruments that have been established or ratified by the government of Indonesia show that Indonesia has a strong commitment to respect and protect human rights for everyone. However, the implementation of those instruments and regulations has been challenging. According to the report of the World Justice Project (WJP) Rule of Law Index 2020, Indonesia ranks 59th out of 128 countries.⁷³ Indonesia is in the 79th place out of 128 countries on respecting fundamental rights. This ranking shows that the positive legal system in Indonesia needs to be improved so that the law is clear, certain, and fair, and the enforcement of basic rights needs to be harmonized with international human-rights law standards.⁷⁴

F. International Human-Rights Enforcement Mechanisms

These international human-rights enforcement mechanisms are basically divided into two: conventional mechanisms and extra-conventional mechanisms.

1. Conventional Mechanisms

The conventional mechanisms are also referred to as the oversight bodies of the agreement, and consist of committees. The various committees and their functions are as follows:

- a. The Committee on Economic, Social and Cultural Rights serves to monitor the implementation of the ICESCR.
- b. The Human Rights Committee serves to monitor the implementation of the ICCPR.

⁷³ See World Justice Project, *The WJP Rule of Law index 2020*, 25, retrieved on June 10, 2020 at www.worldjusticeproject.org.

⁷⁴ *Ibid.*, 39.

- c. The Committee on the Elimination of Racial Discrimination serves to monitor the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.
- d. The Committee against Torture serves to monitor the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- e. The Committee on the Elimination of Discrimination Against Women serves to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women.
- f. The Committee on the Rights of the Child serves to monitor the implementation of the Convention on the Rights of the Child.

In principle, conventional mechanisms monitor the implementation of international treaties on human rights ratified by states. The various committees formed consist of independent experts acting in their respective capacities and not as representatives of their government, even though they are elected by representatives of states parties. The committees consist of 18 members each, except for the Committee against Torture and the Committee on the Rights of the Child (both 10 members) and the Committee on the Elimination of All Forms of Discrimination Against Women (23 members). Members are selected in accordance with the principle of fair geographical representation, thus ensuring balanced perspectives and expertise in the main legal system. The main function of the treaty body is to examine reports submitted by states parties and to consider complaints of human-rights violations.

- a. Country Reporting Mechanisms: All states parties to the treaty are required to submit a report stating the progress made and the problems faced in the implementation of the rights under the relevant agreement.
- b. Individual Complaint Mechanisms: Three of the current international treaties allow individuals to file complaints about alleged violations of the right (Optional Protocol to the ICCPR, Convention on the Elimination of All Forms of Racial

Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

- c. Intergovernmental Complaints: The same three treaties, in addition to the Convention on the Elimination of All Forms of Discrimination against Women, as set out above, also make provision for states parties to file complaints regarding alleged human-rights abuses against other participating countries.

2. *Extra-Conventional Mechanisms*

These extra-conventional mechanisms are divided in two: first, special procedures, including special rapporteurs, special representatives, special envoys and independent experts, as well as working groups (thematic or country); and second, Complaint Procedure 1503.

The Complaint Procedure 1503 is undertaken by the state to the United Nations in case of gross and systematic violations of human rights. Each year the United Nations receives thousands of communications alleging grave and systematic violations of human rights and fundamental freedoms. The Economic and Social Council handles such communications. This is known as the 1503 Procedure in accordance with the adoption of resolution 1503 dated May 27, 1970. It does not deal with individual cases but with situations that affect large numbers of people over a protracted period.

The work of the Universal Periodic Review (the UPR) Working Group will be elaborated after addressing the human-rights mechanisms in Indonesia.

G. Human-Rights Enforcement Mechanisms in Indonesia

The obligation to respect human rights is not only realized by the government of Indonesia through the ratification of the international human-rights instruments and other international human-rights treaties. The obligation to protect requires the state to take the necessary measures (both in the legislative, judicial, and executive fields) to protect the rights and freedoms

of the citizens in its territory. For example, making laws or new public policies or revising or revoking obsolete regulations to provide guarantees for the protection of people's rights and freedoms in their territories. The obligation to fulfill requires states to take steps to fulfill basic human rights and freedoms such as the right to health, the right to a decent living, the right to work, the right to education, etc.

In the policy sphere in 2011, the Indonesian government finally published the National Action Plan for Human Rights (RANHAM) for the period of 2011–2014, subsequently replaced with RANHAM 2015–2019.⁷⁵ RANHAM is a document that contains the objectives, strategies, and priority activities of Indonesia's national human-rights action plan and is used as a reference for ministries, institutions and local governments in respecting, protecting, fulfilling, enforcing and promoting human rights in Indonesia.

There are at least five general goals to be achieved in RANHAM 2015–2019, namely:

- a. Increasing the understanding of human rights in the state apparatus and society;
- b. The implementation of human-rights instruments in government policy;
- c. Increased participation of Indonesia in forums of cooperation on the respect, protection, fulfillment, enforcement, and promotion of human rights;
- d. Increased handling of human-rights violations;
- e. Improved accessibility for persons with disabilities and other vulnerable groups to participate in the civil, political, economic, social and cultural fields.

The Government of Indonesia has also established various human-rights enforcement agencies such as the National Commission for Human Rights

⁷⁵ The Government passed the policy of Indonesia's National Human Rights Action Plan 2011–2014 based on Presidential Decree 23/2011. Then followed the June 22, 2015 Presidential Regulation 75/2015 on National Human Rights Action Plan of 2015–2019. See <http://setkab.go.id/perpres-rencana-aksi-nasional-ham-2015-2019-diteken-ada-secretariat-text/>. Contents of RANHAM 2015–2019 are accessible in full at <http://www.balitbangham.go.id/po-content/peraturan/Perpres%20RanHAM%202015%20Final.pdf>.

(KOMNAS HAM), the National Commission for Women (KOMNAS PEREMPUAN), the Indonesian Child Protection Commission (KPAI), the Human Rights Court, and the Constitutional Court of the Republic of Indonesia.

1. *National Commission for Human Rights (KOMNAS HAM)*

KOMNAS HAM was established through Presidential Decree No. 50/1993. It was established in the context of domestic and international politics that paid serious attention to the issue of human rights. As stated in Article 75 of Law 39/1999, it has the mandate: (a) to develop conditions conducive to the exercise of human rights, whether existing in the national legal instruments or in the UDHR and the Charter of the United Nations (in Articles 55 and 56 referring to the UDHR as a basis for the promotion of human rights); (b) increasing the protection and enforcement of human rights for the development of the Indonesian human person as a whole and his ability to participate in various areas of life.

To achieve these objectives, KOMNAS HAM conducted four main functions, namely: (a) monitoring, (b) research/assessment, (c) mediation, and (d) education. The implementation of the four functions is divided into four sub-commissions, namely the Sub-Commission for Monitoring, Sub-Commission for Education, Sub-Commission for Study/Research and Sub-Commission for Mediation. Outwardly it acts as a single entity, each member of one sub-commission can serve on other sub-commissions.⁷⁶

In its development, KOMNAS HAM is still not considered to have advanced its function to a maximum degree. This is also influenced by the weakness of its position and the lack of funding from the Government. In its latest report (2016), KOMNAS HAM reported accepting complaints of alleged human-rights violations from the community amounting to 500 complaints filed per year. From January to December 2016, the most numerous violations were classified as violations of the right to legal justice in 28 cases, and violations of the right to welfare in 14 cases.⁷⁷

⁷⁶ KOMNAS HAM, *Annual Report 2016. Fulfillment of Minorities and Vulnerable Groups*, [https://www.komnasham.go.id/files/20171101-report-tahunan-komnas-ham-tahun-\\$LZ3FPF.pdf](https://www.komnasham.go.id/files/20171101-report-tahunan-komnas-ham-tahun-$LZ3FPF.pdf).

⁷⁷ *Ibid.*

2. *Indonesian Child Protection Commission (KPAI)*

The KPAI is an independent institution established under Law 23/2002 on Child Protection to improve the effectiveness of child protection. The KPAI was established to respond to reports of violence, neglect, and non-fulfillment of the basic rights of children in Indonesia. The political decision to form the KPAI also cannot be separated from the international impulse. The international community expresses deep concern over the condition of children in Indonesia.

The number of cases of child labor, children in conflict areas, involvement of children in child-soldier conflicts such as those occurring in Aceh, high rates of dropouts, malnutrition, underage marriages, trafficking, etc. led the international community to request the Indonesian government to create a special institution that oversees monitoring of child protection in Indonesia.

3. *National Commission for Women (KOMNAS PEREMPUAN)*

The KOMNAS PEREMPUAN was established based on Presidential Decree No. 181/1998 which was updated in Presidential Regulation No. 65/2005. It is an institution established by the state to respond to the issue of women's rights as a part of human rights, the issue of violence against women. Because of its specific mandate, some have categorized KOMNAS PEREMPUAN as a specific human-rights institution.

The tasks of KOMNAS PEREMPUAN are:

Disseminating understanding of all forms of violence against women in Indonesia and efforts to prevent and overcome and abolish all forms of violence against women;

- a. Conducting studies and research on applicable laws and regulations as well as applicable international instruments and international instruments relevant to the protection of women's human rights;
- b. Carrying out monitoring including fact-finding and documentation of all forms of VAW (Violence Against Women) as well as

- dissemination of the results of public monitoring and taking of measures to promote accountability and handling complaints;
- c. Providing advice and consideration to the government, legislative and judicial institutions and community organizations to encourage the formulation and ratification of legal and policy frameworks that support efforts to prevent and overcome all forms of VAW and that protect, enforce, and promote women's human rights in Indonesia;
 - d. Developing regional and international cooperation to enhance efforts to prevent and overcome all forms of VAW and to protect, enforce, and promote women's human rights in Indonesia.

4. Indonesian Human Rights Court

A human/rights tribunal is required to prosecute gross human-rights violations. The establishment of this human rights court is ordered by the MPR Decree No. XVII/MPR/1998 on human rights. Paragraph 2 states that the court referred to in paragraph 1 shall be established by law within four years at the latest. It did not take four years before the Law 26/2000 on the Human Rights Court was issued.

Since its inception, according to an Indonesian NGO called the Commission for Disappeared Persons (KONTRAS), the Human Rights Court in Indonesia has examined three cases: First, in the East Timor Ad Hoc Human Rights Court there were 12 prosecution dossiers, in all of which the defendant was eventually acquitted. Second, the Tanjung Priok Ad Hoc Human Rights Court: four dossiers, all defendants acquitted. Third, the Abe Pura Ad Hoc Human Rights Court: two dossiers, both acquitted in the first instance.⁷⁸

5. The Constitutional Court of the Republic of Indonesia/ *Mahkamah Konstitusi (MK)*

The MK is a modern judicial institution established in the reform era under Law 24/2003 concerning the MK. It is independent and its decisions are

⁷⁸ Ibid.

final and binding. The MK is known as a guarantor of human rights. One of its powers is to conduct a judicial review to test whether a law is against the 1945 Constitution or not. This means that every citizen, community group or legal entity can submit a petition to the Constitutional Court if their constitutional rights are impaired by the enactment of a law that is deemed to have violated rights guaranteed in the constitution. Isra (2014)⁷⁹ notes four decisions of the court that protect and promote human rights. Three of them are as follows:

1. Decision No. 011-017/PUU-VIII/2003 on the judicial review of Law 12/2003 on General Election of Members of the People's Legislative Assembly, Regional Representative Council, and Regional House of Representatives. In this decision the MK considers that Law 12/2003 Art. 60 (g), which prohibits membership of the People's Legislative Assembly (DPR), DPD, Provincial DPRD, Regency or City DPRD to former members of the banned Indonesian Communist Party organization, persons directly or indirectly involved in G.30.S/PKI or other prohibited organizations, violates the rights guaranteed by the 1945 Constitution, in particular the right to recognition and guarantee of legal certainty, the right to equal opportunity in government and the right to be free from discriminatory treatment as guaranteed and protected through Art. 28C (2), Art. 28D (1), Art. 28D (3), and Art. 28I (2). Therefore Art. 60 (g) of the law is declared to have no binding legal force and is contradictory to the 1945 Constitution of the Republic of Indonesia.
2. Decision No. 6-13-20 PUU-VIII/2010 on the judicial review of Law 16/2004 on the Attorney General of the Republic of Indonesia, Art. 30 (3) (c), which states, "In the field of public order, the prosecutor also conducts activities: supervision of circulation of printed matter." The Attorney General's Office as an authoritative institution had prohibited the circulation of a book called *Six Paths to God*. In its decision, the Constitutional Court considered that the prohibition on circulating books as a source of information, as well as seizure without

⁷⁹ S. Isra, "The Role of the Constitutional Court in the Strengthening of Human Rights in Indonesia," *Journal of the Constitution* 11, no. 3 (September 2014): 421–425.

trial, was inconsistent and even in contradiction with Art. 28F of the 1945 Constitution, the right to oral and written thoughts and rights to the recognition and guarantee of legal certainty. The Constitutional Court declared Art. 30 (3) (c) of Law 16/2004 on the Attorney of the Republic of Indonesia to be contradictory to the 1945 Constitution.

3. Decree No. 27/PUU-IX/2011 concerning the review of Law 13/2003 on Labor states that the regulation on outsourcing is considered to violate workers' rights. The Constitutional Court ruled that the phrase «... temporary employment agreement» in Article. 65 (7) and the phrase «... the employment agreement for a specified time» in Art. 66 (2) (b) of the labor law is considered contrary to the 1945 Constitution of the Republic of Indonesia. This violates everyone's right to work, receive compensation, and fair treatment in employment relations. Despite changes in company owners, as long as workers are bound by labor agreements, the company cannot transfer responsibility for protecting the rights of workers whose work object is still present.

The situation of protection of human rights in Indonesia in 2012 can be seen from the statement of the United Nations Human Rights Council at the 13th Session of the Universal Periodic Review (UPR) in Geneva on May 21–June 4, 2012 (A/HRC/WG.6/13/IDN/1), which shows that the fulfillment of human rights is still considered weak. Therefore, in 2012–2013⁸⁰ Indonesia was willing to accept a special rapporteur, especially regarding the fulfillment of the right to health, the right to housing and the right of freedom of expression, and is committed to guaranteeing the right of freedom of religion.

In the UPR Working Group Report of 2008 (four years prior)⁸¹ the international community highlighted various weaknesses in human-rights protection in Indonesia. For example, the lack of understanding of

⁸⁰ Ifdal Kasim, *Implementation of Economic, Social and Cultural Rights: Normative Framework and International Standards*, National Seminar "Toward the Effective Protection and Monitoring of Economic, Social and Cultural Rights in Indonesia," PUSHAM UII and Norwegian Center for Human Rights. See also Boer Mauna, *Hukum Internasional. Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Global*. Bandung: Alumni (2000).

⁸¹ See *Report of the Working Group on the Universal Periodic Review -Indonesia*, A/HRC/8/23, May 14, 2008, General Assembly of United Nations, Human Rights Council, Eighth session, agenda item 6, accessible at http://www.geneva-academy.ch/RULAC/pdf_state/UPR-Outcome-of-the-Working-Group.pdf.

human rights⁸² in public policy-making at the local level (local regulation led to the fact that in 2002 there were hundreds of local regulations that were repealed because they were not in line with human-rights values). Therefore, harmonization needs to be done both in the field of legislative administration, policy, and implementation.

The Working Group Periodic Report both in 2008 and 2012 illustrates that transforming the norms of international human-rights law into regulation both at the national and local level becomes an important issue that must be considered by the Government of Indonesia. Second, Indonesia's responsibility to respect, protect and fulfill the human rights of its citizens is part of Indonesia's commitment to various international human rights treaties that have been ratified by the Indonesian government.

Indonesia's commitment to protecting human rights is strengthened by Indonesia's ratification of international human-rights treaties, the amendment of its Constitution, and the enactment of several laws. At the regional level, Indonesia is a member of ASEAN, and Indonesia played a significant role in the establishment of the ASEAN Declaration of Human Rights. However, the implementation of all instruments and human rights laws in Indonesia needs to be improved based on the principle of the rule of law through an interdisciplinary approach, as Freeman says, because human-rights violations that take place in Indonesia are complexly influenced by several factors of a philosophical, social, and legal nature.⁸³ Moreover, since the Millennium Development Goals have linkages with human rights, Alston reminds the international community to make strong efforts to realize a number of fundamental goals such as to remove discriminatory laws and practices, to ensure freedom of religion and speech, to ensure freedom of information including access to economic statistics, and to ensure that the rule of law provides security for all citizens.⁸⁴

⁸² Ibid., point 10 p. 4.

⁸³ M. Freeman *Human Rights: An Interdisciplinary Approach*, 2nd edn. (Polity, 2011).

⁸⁴ P. Alston, "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals," *Human Rights Quarterly* 27, no. 3 (2005): 775–829.

H. Concluding Remarks

Conceptually, human rights are inherent rights. They belong to every human being (universality) because of his or her dignity as a human being. Human rights cannot be revoked (inalienable) by anybody. Human rights can only be restricted by the state if the restriction is regulated by law based on strict considerations, that is, to maintain public order, national security, public health or public morality for the sole purpose of protecting the rights of others and not to discriminate against others (non-discrimination). Therefore, human rights are not the gift, the inheritance or the mercy of the state. The state, in this case the government, has a primary obligation in the field of human rights as stipulated in the International Bill of Human Rights and domestic human-rights law. The main obligations of the state in the field of human rights are the obligation to respect, the obligation to protect, and the obligation to fulfill. In carrying out these obligations every country should also pay attention to other guidelines and principles both in the form of general comments and guides, such as the Limburg Principles on the ICESCR.

International human-rights law also provides for human-rights enforcement mechanisms either through existing international institutions or through the mechanisms set out in international human-rights law. Human-rights law in Indonesia is not much different from the international human-rights law. This is because Indonesia is a member of the United Nations that adopts it as part of the national human-rights law. Thus, Indonesia recognizes the binding force of the international human-rights law. This can be seen from Indonesia's ratification of eight international agreements on human rights, as well as the human-rights formulas contained in the 1945 Constitution of the Republic of Indonesia, the Law 39/1999 on Human Rights, the law on the human-rights court and various other laws and regulations. However, the government as the duty-holder of human-rights protection should not continue implementing or making regulations that restrict fundamental rights and are incompatible with the Bill of Human Rights. Moreover, the implementation of the human-rights law and the fulfillment of victims' rights after human-rights violations in Indonesia is still considered weak and needs to be improved.

The importance of promoting and respecting human rights must be understood by every component of the nation and society, not merely as Indonesia's commitment, as part of the international community, to be bound by international agreements. The State recognizes its position as the holder of the obligation to respect, protect and fulfill human rights. More than that, respect for human rights is part of the nation's efforts to uphold the principles of the rule of law, and to achieve the state's goal of protecting the entire nation based on *Pancasila* and *Bhineka Tunggal Ika* (the principle of unity in diversity), further strengthening the implementation of constitutional democratic principles based on the 1945 Constitution of the Republic of Indonesia. It is therefore important to understand basic human-rights principles and human-rights regulations at both international and national levels appropriately and comprehensively.

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